IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4286 OF 2006

Shri Vilas Dharma Patil .. Petitioner.
Vs.
Dayanand Jagannath Shetty & Ors. .. Respondents.

Mr.N.V.Walavalkar for the petitioner.
Mr.S.B.Prabhavalkar for respondent no.2.

CORAM : D.B.BHOSALE, J.
DATED : 3RD OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent no.2. None for the other respondents though served.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Prabhavalkar, learned counsel waives service for respondent no.2.

3. The petitioner-defendant has impugned the order dated 27.4.2006 passed on the application at Exhibit-76 in Special Civil Suit No.38 of 1994 by which the trial Court has rejected the said application. The petitioner had filed the application at Exhibit-76 for setting aside the following order, passed on 22.11.2004:

. "Suit to proceed without additional written

statement of the defendant".

4. From perusal of the application at Exhibit-76, the impugned order and the other material placed before me it appears that the petitioner-defendant had filed his written statement and thereafter the plaintiff prayed for an amendment of the plaint and it was allowed. While allowing the amendment the petitioner-defendant was permitted to file additional written statement which remained to be filed and hence the petitioner filed the application at Exhibit-76. Mr.Prabhavalkar, learned counsel for respondent no.2 submitted that no cogent reason was mentioned in the application for setting aside the "No written statement" order passed on 22.11.2004. The ground, that the advocate was not keeping well, was not found to be sufficient and acceptable since no medical certificate in support thereof was filed by the applicant. I perused the application and the impugned order and in particular paragraph 3 to 6 thereof. Section 5 of the Indian Limitation Act of 1963 has been enacted in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression ‘sufficient cause’ employed is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. From the overall facts and circumstances of the case it is clear that the

petitioner-defendant did not stand to benefit by not filing additional written statement promptly. In any case it cannot be presumed that the delay has occasioned deliberately. In my opinion, the cause shown in the paragraphs 3 to 6 in the application is sufficent. In the interest of justice the court below ought to have allowed the application imposing some cost on the petitioner-applicant. Looking to the stage of the proceedings, in my opinion, no prejudice whatsoever will be caused to the respondent-plaintiff. In the circumstances I pass the following order:

. The order dated 27.4.2006 is quashed and set aside. The application at Exhibit-76 is allowed subject to payment of cost of Rs.500/- to be remitted to the respondent-plaintiff within one week from the date of receipt of this order. The petitioner to file additional written statement within a week therefrom. The trial Court to proceed with the suit and dispose it of as expeditiously as possible and preferrably within a period of eight months from the date of receipt of this order.

. With these observations the Rule is disposed of.

(D.B.Bhosale, J.)